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International Convention for the Protection of All Persons from Enforced Disappearance

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Committee on Enforced Disappearances
Thirteenth session

Summary record (partial)* of the 219th meeting
Held at the Palais des Nations, Geneva, on Monday, 4 September 2017, at 3 p.m.

Chair: Mr. Huhle (Vice-Chair)

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Initial report of Lithuania

* No summary record was prepared for the rest of the meeting.

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Pending the election of the new bureau, Mr. Huhle (Vice-Chair) took the Chair.

The meeting was called to order at 3 p.m.

Consideration of reports of States parties to the Convention

Initial report of Lithuania (CED/C/LTU/1; CED/C/LTU/Q/1 and Add.1)

1. *At the invitation of the Chair, the delegation of Lithuania took places at the Committee table.*

2. **Mr. Griciūnas** (Lithuania), introducing the initial report of Lithuania (CED/C/LTU/1), said that in its preparation the Government had conducted widespread consultations and had involved State institutions and bodies in assessing the implementation of the Convention. Although an established procedure had been followed in making the draft available to the public and circulating it among civil society organizations, those organizations had decided not to put forward any remarks or proposals. By ratifying the Convention and recognizing the Committee's competence to receive and consider communications from individuals and from States parties under articles 31 and 32, the Government had demonstrated its commitment to preventing enforced disappearance, conducting investigations into such crimes, locating disappeared persons, bringing perpetrators to justice and ensuring reparation for victims and their families. Although no cases of enforced disappearance had occurred in Lithuania, the Government recognized the importance of the Convention as a landmark human rights instrument that complemented national legal protections; it hoped that its dialogue with the Committee would contribute to further strengthening the protection of human dignity.

3. In that regard, the Criminal Code had been amended to incorporate the definitions of enforced disappearance and unlawful separation of children as autonomous crimes, in keeping with the provisions of the Convention. Enforced disappearance was addressed in the Code under the chapter on crimes against humanity and was not subject to a statute of limitations; therefore, the concept established in Lithuanian law fully corresponded to the definition provided in Convention.

4. No special measures had been taken in national law in relation to the criminal responsibility of superiors, as required under article 6 of the Convention, since the Government considered that the existing provisions of the Criminal Code established responsibility for negligent performance of duties by a commanding officer and defined the concept of complicity as the intentional joint participation in the commission of a criminal act. Nevertheless, the Government remained open to further recommendations by the Committee.

5. Amendments to article 28 of the Code of Criminal Procedure had come into effect in March 2016, recognizing that the victims of enforced disappearance included not only persons who had died or had suffered physical harm, pecuniary loss or other damages as a result of that criminal act, but also close relatives who had incurred damages as a result of the death of a family member.

6. In November 2016 in Vilnius, the Prosecutor General's Office had hosted an international conference on the application of the Convention with the participation of representatives of governmental institutions and non-governmental organizations (NGOs), civil servants, judges and law enforcement officials. The Government considered that the event, which had included a presentation by a member of the Committee's secretariat had enhanced the participants' understanding of the Convention and its principles.

7. Lastly, he informed the Committee that the Seimas Ombudsmen's Office had recently obtained A status under the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles). As the main voice of human rights in Lithuania, the Office was expected to increase its influence in respect of many issues and to serve as a bridge between national and international human rights instruments, and between civil society and the State.

8. **Ms. Janina** (Country Rapporteur) said that the Committee welcomed the State party's ratification of the Convention and its acceptance of the competences set forth under

articles 31 and 32 thereof; it also appreciated the timely submission of the report. However, she would be grateful for information that would explain the lack of input by NGOs. Did their non-participation stem from their unfamiliarity with the Convention?

9. Congratulating the State party on the accreditation of the Seimas Ombudsmen's Office in March 2017, she asked whether the authorities planned to allocate the financial and human resources that the Office required to comply with its new status. She also wished to know whether any practical measures had been put in place to support its work, and whether the Office also served as the national mechanism for the prevention of torture.

10. While the report and the replies to the list of issues (CED/C/LTU/Q/1/Add.1) clearly indicated the place of international law in the domestic legal system, she considered that more information might be provided about whether the Convention was directly applied by the courts. Did Lithuanian judges have a culture of invoking international instruments in their judgments, and if so, might they refer to the Convention?

11. She noted with satisfaction that a definition of enforced disappearance had been incorporated in domestic law and was broadly in line with the Convention; however, she wondered why that definition did not make reference to arrest. In the light of the claim that the definition in national law was broader than the one contained in the Convention, she would be grateful for an explanation of how that was so, since the Committee would welcome any innovations that might help strengthen protection for victims. Furthermore, she wished to learn whether national law clearly distinguished between enforced disappearance as an autonomous crime and as a crime against humanity. Had the State party adopted provisions establishing separate regimes for each case?

12. The Committee noted that the State party did not intend to introduce a new regime concerning the criminal responsibility of superiors inasmuch as it deemed that the existing legal framework was adequate. However, the definition of complicity contained in the Criminal Code was not aligned with article 6 of the Convention, which required measures to hold criminally responsible superiors who knew about the commission of a crime of enforced disappearance by subordinates, exercised responsibility for the activities concerned with the crime and failed to take preventive measures. Therefore, the delegation might describe how the relevant provisions of the Criminal Code were interpreted and state whether they ought to be brought into line with the Convention.

13. Considering that the articles amending the Criminal Code introduced sentences of 3 to 15 years' imprisonment for the crime of enforced disappearance, she asked whether such penalties were commensurate with the gravity of the crime and how they compared with the penalties that were imposed for other serious offences. Noting that mitigating and aggravating circumstances were applied as part of the general criminal justice framework, she asked the delegation to explain how mitigating and aggravating circumstances might be specifically applied to a case of enforced disappearance.

14. While the Committee understood that domestic laws guaranteed the right of individuals to submit complaints of enforced disappearance, she was interested to know what procedures were followed by prosecutors or other investigators when no formal complaint had been filed. Were they able to institute ex officio proceedings in the event that an alleged enforced disappearance was reported by the media or an NGO? She would also appreciate information about the protection of persons who filed criminal complaints, in particular with reference to the Law on the Protection of the Participants of Criminal Proceedings and Criminal Intelligence, Officers of Justice and Law Enforcement Institutions against Criminal Influence, which described two situations in which protection measures were not applied, namely, where the person did not accept a proposal on the application of measures aimed at protection against criminal influence, and where a protected person refused the protection measures imposed. What was the difference between those two situations?

15. Concerning the prevention of persons alleged to be involved in an enforced disappearance from taking part in the investigation, she asked whether the recommendations on the distribution of investigations into criminal acts carried the force of law and whether they applied only to pretrial investigation institutions or also governed cases involving police or prison officials. Additional details might also be provided about

the legal and practical significance of the right of exclusion set forth in article 57 of the Code of Criminal Procedure. Moreover, she wished to know whether pretrial investigation institutions conducted investigations in cases involving the armed forces or whether a separate authority was responsible for investigating crimes committed by members of the military.

16. Given that the replies to the list of issues mentioned that prosecutors faced restrictions on their right of access to information, she asked what those restrictions entailed and whether they applied in cases of enforced disappearance. Were prosecutors prevented from entering pretrial investigation institutions, places of detention or other premises in which it was suspected that persons had been unlawfully deprived of their liberty? Lastly, the Committee would welcome information on any extradition treaties that the State party had concluded with other countries since ratifying the Convention, in the light of its obligation to include enforced disappearance as an extraditable offence in such treaties.

17. **Mr. Decaux** (Country Rapporteur), recalling that under the Convention exceptional circumstances may not be invoked as a justification for enforced disappearance, asked whether the terms "martial law" and "law on the state of war", mentioned in the replies to the list of issues, were synonymous. More importantly, he wished to understand the consequences that might arise from exceptional situations, such as whether the competences of ordinary courts might be transferred to military courts. Considering article 12 of the Convention, which required that persons and units being investigated should not be able to hinder or influence the conduct of the investigations, and in the light of the Committee's statement on enforced disappearance and military jurisdiction, he asked whether the military police was accountable to the ordinary or the military courts.

18. The Committee would also appreciate further details concerning the State party's application of articles 6 (1) (a) and 6 (1) (b) of the Convention, which addressed accomplices and the criminal responsibility of superiors as separate issues, and in relation to the universal jurisdiction mentioned in paragraph 51 of the report.

The meeting was suspended at 3.40 p.m. and resumed at 4 p.m.

19. **Mr. Griciūnas** (Lithuania) said that the Seimas Ombudsmen's Office was indeed the national mechanism for the prevention of torture and he considered that its accreditation as a national human rights institution with A status was a reflection of its good work. The Office had recently submitted reports to the Ministry of Justice on how aspects of the prison system might be improved and the rights of individuals respected, and it had also presented its observations during the universal periodic review of Lithuania. While resources in the public sector were always limited, he believed that there was a trend to invest in the strengthening of human rights, which had led the Seimas to earmark additional resources that were expected to be available in the near future.

20. Concerning the participation of civil society, the draft report had been published online and made accessible to institutions, NGOs and the general public prior to its adoption; State institutions were obliged to consider and decide whether to adopt comments and suggestions. The Government had directly informed a number of NGOs that the draft report had been published and was available for review, and it had invited them to prepare observations or prepare shadow reports. In his opinion, the NGOs that dealt with missing persons in Lithuania did not consider that their disappearances were connected with State action, and that was the likely reason for their non-participation.

21. Lithuania had not signed any new extradition treaties since 2013, and therefore no clauses making enforced disappearance an extraditable offence had been inserted; however, legal requests for extradition from other countries were reviewed by the competent authorities in accordance with a special procedure. International treaties such as the European Convention on Human Rights were directly applicable by the Lithuanian courts, including courts of first instance, courts of appeal and the Supreme Court.

22. **Ms. Karalytė** (Lithuania) said that article 100 of the Criminal Code contained a definition establishing that criminal liability for enforced disappearance lay with those who "detained, abducted or otherwise deprived another person of his liberty". The definition

thus incorporated the sense of the term "arrest", which in the Criminal Code was understood to mean the short-term deprivation of liberty.

23. The Government considered that the Criminal Code met the requirements set forth in articles 6 (1) (a) and 6 (1) (b) of the Convention. In particular, articles 24 and 100 of the Code defined the organizers of or accomplices to the crime of enforced disappearance, while article 54 stipulated that courts should consider the crimes committed by organizers and accomplices, take into account the extent of their involvement and punish them accordingly. Superiors who were aware of a crime of enforced disappearance incurred additional liability for negligence under article 113. Given that chapter XV of the Code dealt with crimes against humanity and war crimes, individuals could only be held liable under article 100 when the criminal act was undertaken systematically or massively. Article 11 of the Code classified crimes as minor, less serious, serious and grave and provided for sanctions of varying levels of severity. Enforced disappearance fell into the category of grave crimes, for which penalties exceeded 10 years' imprisonment. By comparison, other grave crimes with severe penalties included genocide, homicide and treatment of persons prohibited under international law, all of which carried long-term prison sentences or life sentences. Mitigating and aggravating circumstances were set forth separately in articles 59 and 60; courts could decide to apply those provisions to certain types of crime, including enforced disappearance, on a case-by-case basis.

24. **Mr. Meška** (Lithuania), speaking about potential crimes of enforced disappearance where no complaint was lodged by a direct victim, said that any information supplied to law enforcement officials concerning such matters would be checked and then referred to a prosecutor, who might decide to launch a pretrial investigation. Prosecutors could respond to media reports of criminal acts either by verifying the information themselves or by instructing a pretrial investigation institution to do so. If there were sufficient grounds, the prosecutor would launch a pretrial investigation that would be conducted by the relevant institution; however, where allegations related to the activities of law enforcement officers, the prosecutor should conduct the pretrial investigation himself so as to avoid possible relations between the investigating officers and individuals suspected of involvement. Articles 57 and 58 of the Criminal Code listed the grounds for removal from an investigation, while the Code of Criminal Procedure prohibited dual procedural status, such that any officers suspected of involvement in the commission of a criminal act were not allowed to participate and could be removed from the investigation. Moreover, the recommendations on the distribution of investigations into criminal acts stipulated that where a criminal act might have been committed by an employee of the pretrial investigation institution, the investigation should not be assigned to the same unit of that institution. In such cases, the investigation was referred to another pretrial investigation institution or taken over by the prosecutor. Judges were subject to principles governing the hierarchy of judicial institutions; a judge that had ruled on a particular case could not be involved in reviewing the judgment in a higher instance court.

25. Regarding the right of prosecutors to receive information or to access specific premises, article 155 of the Code of Criminal Procedure stipulated that with the authorization of a judge, the prosecutor might enter the premises of any private or public institution and access any information held by such institutions that might be relevant to the pretrial investigation. When information had been provided that a person had unlawfully been deprived of liberty, prosecutors, police and other pretrial investigation officers had the absolute right to enter premises and were authorized to use force if the owners sought to deny them access. Penalties might be applied to persons who refused to grant access.

26. The principle of universal jurisdiction was established under article 7 of the Criminal Code, which stipulated that persons might be liable for crimes such as enforced disappearance when liability was grounded in international agreements. Any prosecutor receiving information about a possible criminal act of such a nature, regardless of the territory in which it had been committed, was bound to verify the information and to launch a pretrial investigation. Pretrial investigation institutions had been instructed to forward information pertaining to such cases to the Prosecutor General's Office, which would verify that proceedings had not been instituted in other States before deciding whether to proceed on the basis of universal jurisdiction.

27. **Mr. Stravinskas** (Lithuania) said that measures for protection against criminal influence had been established by law and included the physical protection of persons and their property, temporary transfer to a safe location, change of identity and curriculum vitae, change of appearance, issue of firearms and financial support. If a person declined the offer of protection measures, then the measures would not be applied, although in practice no one had yet declined proposed measures. However, there had been some cases in which individuals had refused the continuation of protection measures that had been in place for some time. The police provided physical protection if it was required by persons who were injured or unconscious, until such time as they were able to accept or decline the application of protection measures.

28. **Ms. Damalakaitė** (Lithuania) said that the competence of the military police was defined by the Law on Military Police. The military police was competent primarily to deal with crimes committed by or against military personnel and crimes committed on military bases or on military transports and had only limited competence in the area of civilian justice. If, upon investigating a crime, the military police determined the perpetrator to be a civilian and had cause to detain that individual, it was required to hand him or her over to the civilian police immediately, although there was no legally prescribed time limit for doing so. Both the military and civilian police were obliged to follow the pretrial investigation procedures laid down in the Code of Criminal Procedure.

29. Martial law could be imposed by the Seimas, if it became necessary to defend the homeland or to fulfil the country's international obligations, or by the President, when an armed attack was perpetrated against the national territory. In the latter case, the President was required to seek approval from the Seimas before martial law could be imposed. The Government was required to inform the staff of the country's diplomatic missions, the Secretary-General of the United Nations and the President of the European Council of any decision to impose martial law and of any planned derogations from fundamental rights, such as the right to privacy.

30. If martial law was imposed, the civilian police, civilian courts and courts of general jurisdiction would continue to function until it became practically impossible for them to do so. If, in times of conflict, the civilian police was no longer able to discharge its functions, the military police could take over. The military police was composed of military officers designated by the Chief of Defence. In times of conflict, the time frame for criminal investigations prescribed by the Code of Criminal Procedure may not always be observed. Military courts did not operate in Lithuania in times of peace. However, if civilian courts lost the ability to function in times of conflict, military courts could be established. Military courts, like civilian courts, were governed by the Code of Criminal Procedure. The decisions handed down by military courts could be appealed before the Supreme Court. Military courts could also be established under martial law to try war crimes, crimes against humanity and crimes against the independence, territorial integrity or national defence system of Lithuania.

31. **Ms. Janina** said it was her understanding that the Criminal Code characterized enforced disappearance as an individual crime and not as a crime against humanity. She asked whether there were any domestic legal provisions that characterized enforced disappearance as a crime against humanity in keeping with the Rome Statute of the International Criminal Court and other relevant international instruments. The specificity and seriousness of the crime of enforced disappearance necessitated the introduction of a robust system to prevent and protect against that phenomenon. In that connection, she asked what steps the State party had taken to incorporate into its domestic legislation the criminal liability of superiors who knew or consciously disregarded information which clearly indicated that subordinates under their effective authority and control were committing or were about to commit the crime of enforced disappearance, or who failed to take measures to prevent the commission of or to report that crime, in line with article 6 (1) (b) of the Convention.

32. Noting that the crime of enforced disappearance carried a prison sentence of between 3 and 15 years, she asked whether the Lithuanian courts typically imposed the maximum prison sentence of 15 years on the perpetrators of an enforced disappearance which had resulted in the death of the victim and whether they had ever found the

mitigating circumstances applicable in a given case to warrant the imposition of a prison sentence of less than three years. The delegation might also indicate whether it was possible to appeal against the refusal of a prosecutor to act upon a formal request for the investigation of an alleged enforced disappearance and, if it was possible to do so, before which authority and within what time frame. Similarly, it would be helpful to know whether persons submitting such a request who had been denied special protection by the judicial authorities or whose special protection had been rightly or wrongly terminated could also challenge that decision and, if that were the case, before which authority. She asked how the State party guaranteed the safety of persons who had reported cases of enforced disappearance in the event their request for special protection had been denied.

33. **Mr. Decaux** said that, while article 6 of the Convention was undeniably complex and its requirements stringent, the State party still had a duty to ensure that its domestic criminal legislation covered all aspects relating to the commission of and complicity in the crime of enforced disappearance, including the responsibility borne by superiors in respect of subordinates under their effective authority and control and any failure on their part to prevent or halt the commission of or to report an enforced disappearance. Likewise, the State party's domestic criminal legislation should take due account of the higher standards of responsibility applicable to a military commander or to a person effectively performing that role under relevant international law. Only by fulfilling all the requirements set out in article 6 could the State party create the legal certainty necessary to establish criminal liability for and to effectively prosecute the crime of enforced disappearance. The delegation should also describe the measures taken by the State party to fulfil its obligation under article 3 of the Convention to investigate alleged acts of enforced disappearance committed by non-State actors and to bring those responsible to justice. He would also welcome more information on the activities of the NGO dedicated to supporting the relatives of missing persons. Did that NGO also assist victims of human trafficking?

34. **Mr. Figallo Rivadeneyra** said that the delegation should clarify the criteria used to determine the length of the prison sentence to be imposed on perpetrators of the crime of enforced disappearance and indicate whether the widespread or systematic practice of enforced disappearance in the State party would attract consequences and penalties that were commensurate with a crime against humanity under applicable international law, despite it only being characterized as an individual crime in the Criminal Code. He would also like to hear more about potential scenarios in which mitigating or aggravating circumstances might lead the courts to impose a more lenient or a harsher penalty on perpetrators of enforced disappearance.

35. **Mr. Ravenna** said it was his understanding that Lithuanian judges had successfully applied the principle of universal jurisdiction in a small number of cases. He asked whether there was a specific legal provision that allowed for the extraterritorial prosecution of the crime of enforced disappearance on the basis of the active or passive personality principle. He also wished to know whether the State party's domestic criminal legislation established the criminal liability of a superior who, despite not having played an active role or served as an accomplice in the commission of an enforced disappearance, had failed to discharge the responsibility conferred upon him or her by his or her rank by not acting to prevent or halt the crime or to submit the matter to the competent authorities for investigation and prosecution.

36. **Mr. Baati** said it appeared that superiors could only be held criminally liable when there was evidence to suggest that they had intentionally participated in the commission of an enforced disappearance or when they knew that the crime of enforced disappearance was going to be committed and they neglected to prevent or halt it. He asked what measures the State party envisaged taking to ensure that superiors were held criminally liable in all the circumstances provided for in article 6 of the Convention and what penalties were imposed on superiors who neglected to prevent or halt the commission of the crime of enforced disappearance. Lastly, he would appreciate more information on the scope of the mandate of and the nature of the functions performed by the Seimas Ombudsmen.

37. **Mr. Ayat** said that he found article 15 of the Law on Military Police, which prohibited a military police officer from carrying out a manifestly unlawful order, not to be in full compliance with article 6 (2) of the Convention, which provided that no order or

instruction whatsoever from any public authority, civilian, military or other, may be invoked to justify the crime of enforced disappearance, as there was a degree of ambiguity in the former as to what exactly constituted a manifestly unlawful order. Recalling that article 33 (2) of the Rome Statute of the International Criminal Court provided that orders to commit genocide or crimes against humanity were manifestly unlawful and that enforced disappearance could constitute such a crime in certain conditions, he asked whether the State party intended to take steps to remove that ambiguity. He would also like to know the maximum penalty that could be imposed on the perpetrators of an enforced disappearance which had resulted in the death of the victim and how that penalty compared with those imposed for other serious crimes, such as murder.

38. **The Chair**, noting that the mitigating circumstances set out in the Criminal Code were applicable to all crimes without distinction, asked whether the State party might consider expanding the relevant provisions to include the mitigating circumstances provided for in article 7 of the Convention, which were specific to the crime of enforced disappearance. Recalling that, under article 12 (4) of the Convention, the State party was obliged to take measures to ensure that persons suspected of having committed the crime of enforced disappearance were not in a position to influence the progress of an investigation, he said that it would be useful to know who bore the responsibility of determining whether there were sufficient grounds to suspect a person of having participated in the commission of that crime.

39. **Mr. Griciūnas** (Lithuania) said that the Seimas Ombudsmen's Office, which reported directly to the Seimas, served as both the country's national human rights institution and the national mechanism for the prevention of torture. The legal characterization of the crime of enforced disappearance in the Criminal Code served to distinguish it from other forms of disappearance by making specific reference to the role of the State in its commission. Despite being characterized as an individual crime, the State recognized that enforced disappearance constituted per se a crime against humanity. The length of the prison sentence to be imposed on perpetrators of the crime of enforced disappearance was determined by the courts on a case-by-case basis. If an enforced disappearance resulted in the death of the victim, the perpetrators would be liable to the penalties prescribed for the crime of enforced disappearance and those prescribed for unlawful killing. Only in exceptional circumstances might the courts judge the mitigating circumstances applicable in a case of enforced disappearance to warrant the imposition of a prison sentence of less than three years. In all such cases, the perpetrator of the enforced disappearance had been found not to have acted intentionally. The imposition of a more lenient penalty than that prescribed by law tended to be a source of contention between the prosecution and defence and so the decision was usually taken by a higher court, rather than the court of first instance.

40. **Ms. Karalytė** (Lithuania) said that article 62 of the Criminal Code, which provided for the imposition of a more lenient penalty than that prescribed by law, was applied only in exceptional circumstances and that, even if all the relevant conditions were met, the decision to apply it remained at the discretion of the court. The mitigating circumstances set out in article 59 of the Criminal Code, despite being of a more general nature, were in line with those set out in article 7 (2) (a) of the Convention. It should be recalled that the list of mitigating circumstances contained in article 59 was not exhaustive and that the courts might determine other mitigating circumstances to apply in a given case. Article 100 of the Criminal Code, which defined and established criminal liability and prescribed penalties for the crime of enforced disappearance, should be read in conjunction with articles 24 and 113 of the Criminal Code, which defined complicity and established criminal responsibility and prescribed penalties for superiors who neglected to prevent or halt an enforced disappearance, respectively. Under article 100 of the Criminal Code, it was not necessary for an enforced disappearance to entail grave consequences, such as the death of the victim, to be considered a criminal act. The commission of any of the acts constituting enforced disappearance was sufficient to establish criminal liability. If the victim of an enforced disappearance died as a result of that crime, the perpetrators could be held criminally liable for enforced disappearance and unlawful killing and could incur multiple penalties or a harsher single penalty.

41. **Mr. Meška** (Lithuania), replying to questions posed on the principle of universal jurisdiction, said that the Criminal Code established the competence of the State to launch an investigation into a criminal act irrespective of the territory in which it had been committed or the nationality of the perpetrator, provided that sufficient information was available. Before launching a criminal investigation, the Lithuanian authorities contacted the competent authorities of the State in question to verify that an investigation was not already under way. All information pertaining to the case was to be transmitted to the Prosecutor General's Office, which had a specialized unit responsible for handling such cases.

42. In cases where a formal request for an investigation into an alleged enforced disappearance had been submitted by someone other than the victim, the prosecutor seized of the case could launch a criminal investigation on his or her own initiative or instruct the competent law enforcement agency to do so. If the prosecutor decided not to launch an investigation, the petitioner was entitled to appeal that decision before the judicial authorities within 10 working days. If the petitioner had compelling reasons for not being able to meet that deadline, the judicial authorities could decide to extend it by up to six months.

43. **Ms. Bernackienė** (Lithuania) said that the NGO mentioned by Mr. Decaux provided assistance to victims of human trafficking and forced prostitution, as well as to the relatives of missing persons. Moreover, it conducted a wide range of prevention activities and provided input into public policies to combat those phenomena.

44. **Ms. Damalakaitė** (Lithuania) said that article 27 of the Law on the Organization of the National Defence System and Military Service prohibited issuing military personnel with an unlawful order and forcing military personnel to perform an unlawful act. Any order to commit the crime of enforced disappearance was manifestly unlawful and entailed criminal liability. A military commander who issued an order forcing military personnel to break their oath, a clearly unlawful order or an order violating universally recognized principles and standards of international law could be held criminally liable. All military commanders were responsible for ensuring that their subordinates abided by the laws governing military discipline and international humanitarian law. Upon learning of a crime or a violation of military discipline or international humanitarian law, military commanders were obliged to take all necessary measures within their power to put a stop to the unlawful acts, to ensure they were investigated and to bring those responsible to justice.

45. **Mr. Stravinskas** (Lithuania), replying to the question posed on the possibility of appealing the termination of special protection granted to persons requesting the investigation of an alleged enforced disappearance, said that a decision to terminate the application of special protection measures could be appealed within five working days. The special protection measures in question continued to apply pending the outcome of the appeal. Although the committee responsible for granting or refusing requests for special protection duly considered all the information submitted to it, the final decision rested with the Prosecutor General's Office or the Director of the Prison Department.

46. **Mr. Meška** (Lithuania) said that it was up to the prosecutor to decide, at the pretrial investigation stage, whether to bring charges against a person suspected of having participated in the commission of the crime of enforced disappearance. The prosecutor's decision could be appealed before a higher judicial authority, such as the Prosecutor General or a pretrial investigation judge. The courts determined the length of a prison sentence by assessing the mitigating or aggravating circumstances applicable in the case, in addition to the role played by the accused in the commission of the crime, using the average sentence prescribed by law as a starting point. Any decision to impose a more lenient or harsher penalty than that prescribed by law had to be duly substantiated.

The discussion covered in the summary record ended at 5.35 p.m.

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International Convention for the Protection of All Persons from Enforced Disappearance

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Committee on Enforced Disappearances
Thirteenth session

Summary record (partial)* of the 220th meeting
Held at the Palais des Nations, Geneva, on Tuesday, 5 September 2017, at 10 a.m.

Chair: Mr. Huhle (Vice-Chair)

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Pending the election of the new bureau, Mr. Huhle (Vice-Chair) took the Chair.

The meeting was called to order at 10 a.m.

Consideration of reports of States parties to the Convention (*continued*)

Initial report of Lithuania (*continued*) (CED/C/LTU/1; CED/C/LTU/Q/1 and Add.1)

1. *At the invitation of the Chair, the delegation of Lithuania took places at the Committee table.*

2. **The Chair**, in opening the meeting to continue the Committee's consideration of the initial report of Lithuania (CED/C/LTU/1), said that the focus would be on measures to prevent enforced disappearance and on victims' rights.

3. **Ms. Janina** (Country Rapporteur) said that she wished to know whether the State party's domestic law contained an explicit ban on the expulsion of persons who would be at risk of enforced disappearance if expelled, on what grounds the principle of non-refoulement was applied and whether those grounds included a belief on the part of the person concerned that he or she was in danger of being disappeared. Referring to paragraph 81 of the initial report, she asked what the difference was between the simplified and the regular extradition procedures, what happened when the person concerned withdrew his or her consent and whether decisions taken under the simplified procedure were appealable. It would be helpful to know what entity had the authority to receive and assess asylum requests, whether the State party subscribed to the concept of safe countries of origin and, if so, what entity was responsible for decisions in that domain, and whether the State party accepted diplomatic assurances in extradition cases. Noting that the matter of rendition had been raised on numerous occasions over the previous decade in other treaty bodies and international mechanisms, she would be interested to know whether investigations into the existence of a secret detention centre were ongoing, how transparent they had been, whether the public had been informed of the findings, whether those responsible had been brought to justice and whether victims had been provided with redress.

4. Regarding the fundamental rights of detained persons, she wished to know how quickly the relatives of a detained person were notified of the detention, at what stage a detainee was allowed to meet with the court-appointed lawyer, whether detainees could file complaints when their rights were infringed and, if so, what procedures were followed, and whether individuals who had infringed a detainee's rights were punished. It would be useful to know if and how the KADIS data storage and management system was connected to the Register of Detained, Arrested and Convicted Persons, who maintained that system, whether it was ever misused and whether there were penalties for its misuse.

5. Pointing out that article 24 of the Convention was very broad, she would be grateful to know whether the expanded definition of "victim" adopted by the State party in 2016 was fully in line with the Convention. She would also be grateful to know whether only persons who had been given the official status of victim by the courts could receive support from the compensation fund for victims of crime and whether there were plans to widen the scope of compensation to include other forms of reparation. The Committee was of the view that, even where there were no cases of enforced disappearance, States parties should have a system in place to provide social protection in the event of such a situation.

6. **Mr. Decaux** (Country Rapporteur), noting that it appeared from the replies to the list of issues (CED/C/LTU/Q/1/Add.1) that the Seimas Ombudsmen's Office tended to chiefly visit ordinary detention centres, asked whether the Office was allowed to conduct visits to all official and non-official establishments with a view to ensuring that no one was held incommunicado; he also wondered what the legal status of the Office's recommendations was. He wished to know whether the type of training provided at the conference mentioned in paragraph 66 of the replies would be repeated in future or if it was part of the basic or in-service training of police officers and all other professionals likely to be involved in investigating cases of enforced disappearance. He would appreciate the delegation's comments on the extent to which the right to truth, justice and reparation was respected in the State party, particularly in cases that had been closed owing to a lack of evidence, and

on the possibility of non-pecuniary damages being awarded. Lastly, could the status of "absentee" be applied to victims of enforced disappearance?

7. **Mr. Teraya**, drawing the delegation's attention to paragraph 15 of the list of issues (CED/C/LTU/Q/1), asked how much time was allocated to human rights education in the training of law enforcement personnel and other professionals, whether that training made specific reference to enforced disappearance and whether any mechanism was in place to ensure that those who received the training kept up their knowledge throughout their careers.

8. **Ms. Kolaković-Bojović** asked whether compensation could be awarded as part of the criminal proceedings or whether a victim had to initiate separate civil proceedings, what the minimum and maximum amounts of compensation were, how the amount was calculated and how long it took to receive compensation.

9. **Mr. Baati**, recalling that the right to justice was a comprehensive concept that went beyond material considerations, asked to what extent the State party took a holistic approach to compensation.

10. **Mr. Griciûnas** (Lithuania) said that there were no restrictions on inspections carried out by the Seimas Ombudsmen's Office; it had access to all institutions, including private premises if there were substantial grounds to believe that a person was being held there. Court authorization was not required for such inspections, although the involvement of law enforcement personnel might be necessary depending on the situation. In recent years, the Office had conducted inspections at a variety of establishments, such as police stations, detention centres, childcare facilities and mental health institutions. The Office's recommendations were not legally binding but they were regularly implemented in practice. They were transmitted not only to the establishment concerned but also to the entity responsible for its oversight. Some recent recommendations remained outstanding because they implied larger structural changes or an additional budgetary allocation, not because there was reluctance to implement them. In addition, the Office was involved in training and awareness-raising, having conducted three seminars for prison staff in 2016.

11. There were no barriers to an individual's access to a lawyer. There were two distinct compensation funds for victims of crime: one was for victims of offences committed by a private individual and the other was for victims of an offence committed by a State official. In the latter case, the amount of compensation was decided by the courts and varied according to the circumstances of the case. Decisions on compensation tended to be aligned with similar decisions of the European Court of Human Rights. The award was not limited to financial compensation and could include restitution.

12. Responding to the question about immigration matters, he said that those were the sole responsibility of the Migration Department of the Ministry of the Interior, whose decisions were implemented by Department staff in cooperation with law enforcement agencies. Situations were assessed on a case-by-case basis. The filing of an asylum request had a suspensive effect with regard to any extradition proceedings.

13. The position of Lithuania was that there had not been any cases of rendition. As he himself had testified during domestic proceedings, the questionable activities under investigation related to the exfiltration of operatives and had been conducted on premises whose location in central, densely populated areas would have made them an unreasonable choice for "special" detention facilities.

14. **Mr. Meška** (Lithuania) said that the main difference between the regular and fast-track extradition procedures was the time frame: under the fast-track procedure, the court was required to render a decision within three days, compared with seven under the regular procedure. Nevertheless, the court had a duty to verify that the person concerned fully understood the fast-track procedure and had given consent freely. Consent could be withdrawn at any time, thereby triggering application of the regular procedure.

15. Regarding the alleged cases of rendition, the investigation was ongoing because of the time required to liaise with other countries; information was pending from three foreign Governments. As to whether information had been provided to victims and their relatives, it should be noted that the investigation had been launched at the urging of non-governmental

organizations (NGOs) and that the lawyers for Redress Trust and Human Rights Watch had a right to access all the materials and to challenge decisions taken as part of the investigation. Therefore, they were well informed of progress in the case.

16. Prosecutors were required to notify a detainee's relatives of the detention immediately following the court hearing and to record that the notification had taken place. In addition, detainees had the right to telephone the person of their choice. If the detainee was a minor, notification of the parents was mandatory; if the parents were also involved in the offence, then the child protection services were notified. Prosecutors were required by law to inform victims when a suspect had been detained. Where victims wished to be informed of a suspect's release, notification was provided in writing.

17. The conference held in November 2016 had not been the only training provided. The issue of enforced disappearance was included in the curriculum for prosecutors, who were tested on their knowledge every five years. Under Lithuanian law, victims could seek redress as part of a criminal suit, except where the court deemed that the claim disrupted the proceedings; in such cases, a civil suit was initiated. There was no maximum amount and past awards had been generous; the awarding of non-pecuniary damages was also possible.

18. **Mr. Kiela** (Lithuania) said that the KADIS database was used more specifically for sentence enforcement, but that all the data it contained were nonetheless entered into the Register of Detained, Arrested and Convicted Persons. Persons who accessed the database were required to enter the reason for their query, and checks were carried out to prevent information from being abused; disciplinary and criminal penalties were provided for in the event of abuse. There were no obstacles to detainees contacting their relatives. Detainees had the right to file complaints either with the administration of the establishment where they were being held or, within 30 days, with another establishment.

19. **Mr. Stravinskas** (Lithuania) said that, when a person was arrested and held in detention, police officers were under an obligation to inform the prosecutor and a member of the person's family. They were also required to note the name of the relative concerned in the case record and the time he or she had been informed. If someone's whereabouts remained unknown for a period of one year, interested parties could apply to the courts to have that individual officially designated as missing. Inquiries into the fate of missing persons could be carried out in accordance with both the Code of Criminal Procedure and the Code of Civil Procedure. A programme to combat human trafficking had been in place since 2002 and, in 2016, the Ministry of the Interior had approved an anti-human trafficking plan that included a training module for police officers who dealt with such cases. A monitoring system was in place to ensure that officials who accessed prison databases used the information they obtained legally.

20. **Ms. Bernackienė** (Lithuania) said she was pleased to announce that the Seimas had recently approved legislative amendments that prohibited the use of corporal punishment against children. Under the new provisions, the State was obliged to take all the legal, administrative, social and educational measures necessary to protect children from violence. In order to reduce the incidence of violence against minors, an action plan on child welfare had been launched and, when episodes of violence or sexual abuse did occur, specialist assistance was available for victims and their families, including physical and mental health care, as well as legal and social support.

21. Local municipalities had begun setting up mobile groups to offer long-term support services to children who had been victims of sexual exploitation. At the same time, the State, local authorities and NGOs were cooperating in the implementation of a national programme for the prevention of domestic violence. Financial aid was available to help victims of human trafficking to reintegrate into society. All those social assistance services were also available to child victims of enforced disappearance and their families.

22. **Mr. Griciūnas** (Lithuania) said that he was unable to give precise information about the duration of compensation procedures, but his understanding was that they were relatively speedy, lasting perhaps just a matter of months. The form that reparation took depended on whether the applicant was seeking monetary compensation, restitution or restoration of reputation, all of which were contemplated in the Code of Civil Procedure.

The definition of "victim" in the Criminal Code was consistent with the European Union directive on victims of crime.

23. **Ms. Janina** said that she wished to know whether individuals who were not in possession of official documentation designating them as victims — such as persons who claimed to have been subjected to rendition — were able to access the compensation funds. She would be interested to learn how the courts and prosecutors acted if a person being forcibly removed from the country claimed that he or she risked becoming a victim of enforced disappearance in the State to which he or she was being extradited.

24. She would welcome more details about who was authorized to access information concerning investigations into alleged cases of rendition. Were some parties granted only limited access to documentation due to issues of State security? In the light of article 24 of the Convention, according to which a victim was a disappeared person or any individual who had suffered harm as the direct result of an enforced disappearance, she wished to know whether someone not related to a disappeared person could also claim victim status under domestic law.

25. **Mr. Decaux** said that the Convention was an innovative instrument that sought to provide victims — defined in article 24 (1) as all persons with a legitimate interest to intervene — not just with effective redress but also, more broadly, with truth and transparency. It was understandable that the delegation could not give an immediate response to all the Committee's questions, but it should recall that it could provide written responses to the Committee within 48 hours. It was important to establish a broad juridical framework on enforced disappearance, one that contemplated both prevention and reparation. In that context, he wished to know whether non-material forms of reparation were available, such as those envisaged in article 24 (5) of the Convention, notably guarantees of non-repetition.

26. **Mr. Ayat** said that he supported the comments made by Ms. Janina and Mr. Decaux. It was vitally important for domestic law to give clear and precise details about the safeguards in place to protect the rights of persons deprived of liberty, for example, with regard to access to a lawyer. Nonetheless, even when domestic law was fully compliant with international human rights treaties, the practical application of that law could be defective — not necessarily due to bad faith but as a consequence of a lack of resources or training. Article 18 of the Convention concerned the right of persons with a legitimate interest, such as the relatives or lawyer of the person deprived of liberty, to access relevant information, including information about that individual's state of health. In that light, he wished to know whether persons in detention in the State party were effectively able to exercise their right to be examined by a doctor, either at their own request or that of their relatives.

27. **The Chair** said that he would be interested to learn whether the national legal system had established a temporal relationship between the moment a victim suffered harm and the moment he or she could claim reparation. Specifically, was reparation available for persons who had suffered harm during the period before Lithuania had gained independence from the Union of Soviet Socialist Republics?

28. **Mr. Griciūnas** (Lithuania) said that basic health care was provided to persons deprived of liberty directly in their place of detention. More serious health issues were dealt with in a prison hospital, while complex medical conditions requiring sophisticated treatment were addressed in civilian hospitals, where detainees received the same level of care as that provided to the general public. In fact, persons in detention often received care faster than ordinary citizens, who sometimes had to wait for a number of months before receiving treatment.

29. Some difficulties with detainees accessing lawyers had arisen but they had been very minor incidents that had been resolved immediately, and there were no systemic problems in that regard. His understanding was that lawyers could have access to detainees for a maximum of eight hours a day. As far as he was aware, a person did need to be in possession of official victim status in order to access the compensation funds. In cases where a victim had died as a result of a crime, his or her relatives could have access to the funds. When the State was guilty of wrongdoing and the courts awarded compensation, the

State simply implemented the court ruling, whether it benefited the direct victim, a family member or a third party.

30. **Mr. Meška** (Lithuania) said that the authorities in Lithuania had encountered cases where requests for legal assistance from abroad had clearly been motivated by a desire on the part of certain States to neutralize political opponents. Lithuania therefore handled such requests very carefully, also seeking information from third States, in order to ensure that persons were not exposed to the risk of reprisals. Under national legislation, documents pertaining to pretrial investigations were not made public. Parties to a case could access the documentation but were under an obligation not to divulge its contents. If access to the documents raised issues of State security, lawyers accessing them needed to be in possession of a special authorization.

31. The Code of Criminal Procedure defined a victim as a natural person who had suffered harm as the result of a crime or a relative of a person who had died as the result of a crime. Individuals not related to the direct victim, but who lived with or cared for him or her and had suffered as the result of a crime, could also claim reparation. The status of victim could not be imposed; it had to be actively claimed by the person concerned. When determining compensation, the courts also sought to put a monetary value on non-material harm, such as stress. In the case of offences committed by public servants, the State could be required to pay compensation.

32. The right to see a lawyer was unrestricted and existed from the moment a person was detained. Even when detainees stated that they did not want legal representation, that statement had to be made officially in the presence of a lawyer in order to preclude any subsequent claim that they had been forced to waive their right to legal assistance. Non-material harm had been recognized in the new Criminal Code, introduced in 2003. Prior to that, only material harm had been recognized. Reparation for non-material harm resulting from crimes committed in the past could be claimed through civil proceedings.

33. **Ms. Janina** said that she wished to commend the State party for its constructive approach to the entire reporting process and its readiness to engage in dialogue with the Committee. She hoped that the State party would continue in that cooperative vein and duly implement the concluding observations, which were an expression of the views of the Committee as a whole, not just of the rapporteurs. In that way, Lithuania would continue to set a good example to other States as they moved towards ratification of the Convention.

34. In particular, she wished to compliment the national authorities for having criminalized enforced disappearance as a separate offence under domestic legislation. The Committee had also been pleased to note that there was no statute of limitations on cases of enforced disappearance, even though such a provision was not obligatory under the Convention. Nevertheless, she and other members had drawn attention to the importance of holding superiors criminally accountable for their actions and of ensuring that enforced disappearance attracted a punishment that reflected the very serious nature of the crime.

35. The Committee's concerns revolved not just around the letter of the law but also around its practical implementation. Victims needed to be able to exercise their rights freely and fully, particularly those stipulated under article 17 of the Convention, which prohibited secret detention and stated that persons deprived of liberty should be allowed to contact their relatives and lawyers. She looked forward to hearing how the new legal definition of "victim" would be implemented in practice and how it would benefit victims of enforced disappearance. As the Convention was a relatively recent instrument, it was also important for the authorities to focus efforts on the training of law enforcement officers and other public officials.

36. **Mr. Decaux** said that he agreed with Ms. Janina that the interaction with the Committee, up to and including the constructive dialogue, had been exemplary. In particular, the State party was to be commended for its transparency, its focus on training in related areas, such as human trafficking, and its presentation of the declarations under articles 31 and 32 of the Convention.

37. By transposing the definitions of the Convention into domestic law, the State party was seeking to underscore the principle of legality and to ensure the highest possible level

of legal safeguards. In that connection, it should consider transposing the provisions of article 6 in their entirety. Moreover, given the extreme seriousness of the crime of enforced disappearance, it should clarify its sentencing policies to ensure condign punishment for the offence in all cases, whether it was an isolated crime, an ancillary offence or a crime against humanity.

38. Prevention could be ensured by an adequate system of control and registration. The Seimas Ombudsmen also had an important role to play in that regard. The State party should consider how it could further improve its implementation of the Convention, particularly the more innovative aspects such as the provision for reparation for collective violations.

39. **Mr. Griciūnas** (Lithuania) said that his delegation had been very pleased to engage with the Committee in the interactive dialogue. He was grateful to members for the challenging questions they had raised, which had helped him to see the situation in Lithuania from a different perspective. He was sure that any improvements the State could make in its implementation of the Convention would have a positive effect on its implementation of other international human rights instruments.

40. **The Chair** said that he wished to echo the rapporteurs' words of praise for the State party. The delegation should recall that it could provide the Committee with further answers in written form within 48 hours.

The meeting rose at 12.05 p.m.